



City of Thousand Oaks

**PUBLIC WORKS DEPARTMENT
MARK D. WATKINS, DIRECTOR**

September 13, 2010

Via email

Mr. Sam Unger
Executive Officer
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, California 90013

Subject: Proposed Total Maximum Daily Load for Debris in the Nearshore and Offshore of Santa Monica Bay – Comment Letter

Dear Mr. Unger:

The City of Thousand Oaks (the City) appreciates the opportunity to comment on the proposed draft Santa Monica Bay (SMB) Marine Debris Total Maximum Daily Load (Debris TMDL) Staff Report and Basin Plan Amendment (BPA).

A small portion of the City lies within the upper Malibu Creek Watershed (MCW). The City is currently identified as a responsible party to the Malibu Creek Watershed Trash TMDL. The City has coordinated compliance efforts with other MCW stakeholders and is actively implementing and currently meeting all MCW Trash TMDL compliance requirements. The City has very strong concerns with its inclusion in the Debris TMDL, as well as the current language and requirements in both the Staff Report and BPA.

While the City is committed to addressing trash impairments in its jurisdictional areas of the MCW, we are most highly concerned with two specific items:

1. Naming the City as a responsible party under the Santa Monica Bay Debris TMDL in addition to the Malibu Creek Watershed Trash TMDL will require the City to meet the requirements of two different regulations addressing the exact same impairment in the MCW. It also places the City in regulatory "double jeopardy", in that compliance with the "trash" TMDL does not ensure compliance with the "debris" TMDL. The existing EPA approved MCW Trash TMDL addresses all trash impairments in the watershed. The Regional Board has not provided adequate linkage analysis data to justify the imposition of additional TMDL implementation and monitoring requirements. The overlapping TMDLs will ultimately led to extraordinary costs, complication and confusion for both the City and the other MCW Trash TMDL responsible parties, without increased beneficial use protection.

2. The City is highly concerned that it will be inappropriately burdened with a costly and misdirected effort associated with TMDL requirements pertaining to plastic pellets. The City has no facilities in the Malibu Creek Watershed that utilize, store, or transport plastic pellets. However, the proposed BPA will require the City to develop a Plastic Pellet Monitoring and Reporting Plan (PMRP), revise current stormwater inspection practices and programs, and ultimately be burdened with monitoring requirements when specific identifiable industries should clearly bear this responsibility. The proposed BPA language clearly and correctly states that Waste Load Allocations (WLAs) will be allocated to industrial facilities as responsible parties. It is overreaching, unfair and an imprudent use of public funds for the Regional Board to require any agency, including the City, to be held responsible for plastic pellets spilled during transportation or while in use at industrial facilities.

The following describes in detail the aforementioned concerns and includes recommendations that the City believes will assist in developing the final TMDL documents.

Overlapping TMDL Requirements and Redundancy

The City is highly concerned with the apparent overlapping TMDL requirements that would be imposed if the current version of the Debris TMDL is adopted. It is unclear why the Regional Board is adopting additional TMDL requirements in the MCW, essentially creating duplicative regulatory actions and requirements addressing the same pollutant. The City has invested resources into meeting compliance requirements per the EPA approved MCW Trash TMDL for identified and listed reaches impaired for trash. It is not clear why the City would be required to address point sources via a mechanism other than the current Minimum Frequency Assessment Program (MFAC) approach and develop separate Trash Monitoring and Reporting Plans (TMRPs), as would be required in the Debris TMDL BPA. The current Debris TMDL language acknowledges the use of the MCW baseline for the Debris TMDL but lacks any reference to current MFAC or TMRPs. Furthermore, the Debris TMDL BPA lists implementation requirements for open space areas not currently 303(d) listed for trash. Again, it is unclear why the BPA would essentially require two separate MFACs and TMRPs for the same watershed.

The City believes that the improvements and constructive elements included in the MCW Trash TMDL should be fully implemented and evaluated prior to any effort to re-double the regulatory burden on listed Responsible Parties. As proposed, the City would have to develop and implement two TMRPs. We request clarification in both Staff Report and BPA language to clarify any possible confusion, and again, would recommend clearly stating that a responsible party implementing and in full compliance with the MCW Trash TMDL is meeting requirements of the Debris TMDL.

Based on the above comments, the City requests that it be removed as a responsible party to the Debris TMDL or that the BPA be revised to fully acknowledge that the City,

if implementing and fully complying with the MCW Trash TMDL, is deemed to be in compliance with the Debris TMDL.

Lack of Linkage Analysis Necessitating City Inclusion in the TMDL

The City remains committed to addressing trash in jurisdictional areas, yet it is not clear how the Regional Board is linking any near or offshore impairment to the City, other than by virtue of a portion of the City's land area being located within the MCW. While it is clear jurisdictional boundaries lie within a watershed that drains to the Santa Monica Bay, the language in both the BPA and Staff Report fail to identify data that specifically links the City to nearshore or offshore impairments. It should also be noted that there are five 'sinks' and physical barriers that significantly limit the mobility of trash and debris and rarely provide any consistent hydraulic conduit for trash or debris to flow from the City's jurisdiction to Santa Monica Bay. Westlake Lake and dam, Lake Lindero and dam, Malibu Lake and dam, Rindge dam, Malibu Lagoon and beach sand bar form significant barriers to trash movement from Thousand Oaks to the Santa Monica Bay. The City requests that the Staff Report and BPA be revised to clearly identify how SMB nearshore and offshore impairments are linked to discharges from Malibu Creek tributaries that are located far upstream of the Santa Monica Bay.

The City is troubled by the precedent established by the approach taken in the BPA, which proposes TMDL requirements for reaches that have not been identified as impaired. It does not seem appropriate for the Regional Board to utilize a "guilty until proven innocent" approach for this TMDL, by seemingly assuming that every reach of stream that drains to the bay is impaired by trash. The Malibu Creek Watershed has identified impaired areas which are addressed by the MCW Trash TMDL. The City requests the language be revised to remove any required Debris TMDL efforts outside of the identified impaired reaches in the MCW.

Appropriate Approach to Addressing Plastic Pellets

The City is concerned that the current approach the Regional Board is taking in addressing plastic pellets via the Debris TMDL will not successfully address the issue. While the City acknowledges the appropriate manner in which industrial permit holders will be assigned Waste Load Allocations (WLAs), we fully believe that a process to address pellets at the source (through industrial permitting) would more fairly and effectively address the issue. Facilities that utilize, transport, distribute and/or store pellets would be better suited to utilize source control strategies prior to pellets entering the environment.

The City is concerned that if the current BPA requirements are not revised, the City will be required to implement actions that are inappropriate and unnecessary. The City should not be required to develop a Plastic Pellet Monitoring and Reporting Plan (PMRP), as 1) the industrial facilities should have the burden of addressing monitoring requirements as the responsible party implementing the WLAs and 2) no such industrial facilities are located in the City. Additionally, the City should not be required to monitor for plastic pellets or revise current stormwater inspection programs. If the Regional

Mr. Sam Unger
September 13, 2010
Page 4

Board chooses to address plastic pellets via this TMDL, the City requests that all monitoring and reporting requirements be clearly designated as the obligation of the responsible industrial parties.

Thank you for your attention to the City's concerns with the proposed Debris TMDL. If you have any questions or need additional information, please call Bob Carson at (805) 449-2424 or myself at (805) 449-2399.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Watkins", with a stylized flourish at the end.

Mark D. Watkins
Public Works Director

DPW:530-25(21)/SMB Debris TMDL comments 9_13_10